

prior record introduced by the investigating officer and any commendatory information.

(d) The respondent may offer evidence and argument in mitigation of the charge or charges found proved.

(e) The investigating officer may offer evidence and argument in rebuttal of the evidence and argument introduced by the respondent in mitigation.

#### § 5.567 Order.

(a) The Administrative Law Judge enters an order which recites the disposition of the case. When a charge has been found *not proved*, the order will state the charge is *dismissed* with or without prejudice. When a charge is found *proved*, the Administrative Law Judge may order an *admonition*, *suspension* with or without probation, or *revocation*.

(b) The order is directed against all licenses, certificates or documents, except that in cases of negligence or professional incompetence, the order is made applicable to specific licenses, certificates or documents. If the Administrative Law Judge determines that the respondent is professionally incompetent in the grade of the license, certificate or document held, but is considered competent in a lower grade, the license, certificate or document may be revoked and the issuance of one of a lower grade ordered.

(c) An order must specify whether the license, certificate or document affected is:

- (1) Revoked;
- (2) Suspended outright for a specified period after surrender;
- (3) Suspended for a specified period, but placed on probation for a specific period; or
- (4) Suspended outright for a specified period, followed by a specified period of suspension on probation.

(d) The order will normally state, *that the license, certificate or document is to be surrendered to the Coast Guard immediately*, if the order is one of revocation or includes a period of outright suspension. In cases involving special circumstances, the order may provide for surrender on a certain date.

(e) The time of any period of outright suspension ordered does not commence until the license, certificate or docu-

ment is surrendered to the Coast Guard. The time of any period of suspension on probation begins at the end of any period of outright suspension or the effective date of the order if there is no outright suspension.

#### § 5.569 Selection of an appropriate order.

(a) This section addresses orders in a general manner. The selection of an appropriate order is the responsibility of the Administrative Law Judge, subject to appeal and review. The investigating officer and the respondent may suggest an order and present argument in support of this suggestion during the presentation of aggravating or mitigating evidence.

(b) Except for acts or offenses for which revocation is mandatory, factors which may affect the order include:

(1) Remedial actions which have been undertaken independently by the respondent;

(2) Prior record of the respondent, considering the period of time between prior acts and the act or offense for which presently charged is relevant; and

(3) Evidence of mitigation or aggravation.

(c) After an order of revocation is entered, the respondent will be given an opportunity to present relevant material on the record for subsequent consideration by the special board convened in the event an application is filed in accordance with subpart L of this part.

(d) Table 5.569 is for the information and guidance of Administrative Law Judges and is intended to promote uniformity in orders rendered. This table should not affect the fair and impartial adjudication of each case on its individual facts and merits. The orders are expressed by a range, in months of outright suspension, considered appropriate for the particular act or offense prior to considering matters in mitigation or aggravation. For instance, without considering other factors, a period of two to four months outright suspension is considered appropriate for *failure to obey a master's written instructions*. An order within the range would not be considered excessive. Mitigating or aggravating factors may

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make an order greater or less than the given range appropriate. Orders for repeat offenders will ordinarily be greater than those specified.

TABLE 5.569—SUGGESTED RANGE OF AN APPROPRIATE ORDER

Type of offense	Range of order (in months)
Misconduct:	
Failure to obey master's/ship officer's order.	1-3.
Failure to comply with U.S. law or regulations.	1-3.
Possession of intoxicating liquor.	1-4.
Failure to obey master's written instruction.	2-4.
Improper performance of duties related to vessel safety.	2-5.
Failure to join vessel (required crew member).	2-6.
Violent acts against other persons (without injury).	2-6.
Failure to perform duties related to vessel safety.	3-6.
Theft .....	3-6.
Violent acts against other persons (injury).	4-Revocation.
Use, possession, or sale of dangerous drugs.	Revocation (Note: see § 5.59).
Negligence:	
Negligently performing duties related to vessel navigation.	2-6.
Negligently performing non-navigational duties related to vessel safety.	1-3.
Neglect of vessel navigation duties.	3-6.
Neglect of non-navigational safety related duties.	2-4.
Incompetence .....	The only proper order for a charge of incompetence found proved is revocation.
Violation of Regulation:	
Refusal to provide specimens for required chemical test..	12-24.
Dangerous drugs (46 U.S.C. 7704).	The only proper order for a charge under 46 U.S.C. 7704 found proved is revocation.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985, as amended by CGD 86-067, 53 FR 47079, Nov. 21, 1989]

### § 5.571 Delivery of decision.

(a) Whenever possible, the Administrative Law Judge's decision is delivered in writing to the respondent or to the respondent's authorized representative at the final hearing session. If it is not possible for the Administrative Law Judge to deliver a complete written decision at the final session of the hearing, an oral decision is rendered on the record, with a written order pre-

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pared and served on the respondent or the respondent's authorized representative. The decision, including the order, is effective upon service of the written order.

(b) If a complete written decision is not delivered at the final hearing session, the Administrative Law Judge prepares and has served on the respondent or the respondent's authorized representative a complete written decision within 30 days, when possible, after completion of the hearing. This delivery may be by personal service or certified mail, return receipt requested. The signed acknowledgment of personal service or the return receipt becomes a part of the hearing record.

(c) As used in this section, the phrase, *authorized representative* means any person who has been authorized by the respondent, as shown by the hearing record, to receive service and take an appeal on behalf of the respondent.

[CGD 82-002, 50 FR 32184, Aug. 9, 1985; 50 FR 35228, Aug. 30, 1985]

### § 5.573 Notification of right to appeal.

The respondent is advised by the Administrative Law Judge of the right to appeal in accordance with subpart J of this part.

### § 5.577 Modification of Administrative Law Judge's decision and order.

(a) After an Administrative Law Judge renders the decision and order, it may be modified or changed pursuant to procedures set forth in paragraph (b) of this section, in subpart I of this part for reopening of hearings; in subpart J of this part for appeals; or in subpart K of this part for review of Administrative Law Judge's decision by the Commandant. In the absence of any such actions, the decision of the Administrative Law Judge is final.

(b) When the proceeding is based on a conviction for a dangerous drug law violation, rescission of the order affecting the license, certificate or document will not be granted, unless the applicant submits a specific court order to the effect that the conviction has been unconditionally set aside for all purposes. An order of revocation will not be rescinded as the result of any law which provides for a subsequent conditional setting aside, modification or